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FISCAL IMPACT STATEMENT

LS 6434

BILL NUMBER: SB 136

NOTE PREPARED: Apr 15, 2009

BILL AMENDED: Mar 16, 2009

SUBJECT: Purchasing and Public Works.

FIRST AUTHOR: Sen. Charbonneau

FIRST SPONSOR: Rep. Battles

BILL STATUS: As Passed House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Expiration:* This bill removes the expiration date of a provision concerning certain purchasing preferences for certain businesses.

Public Works Contracts: It provides that contracts for public works projects may not be awarded to a contractor that does not:

- (1) employ residents of Indiana as at least 90% of the employees working on the contract;
and
- (2) enter into subcontracts only with subcontractors that employ residents of Indiana as at least 90% of the employees working on the contract.

The bill applies this restriction to contracts entered into by the Public Works Division (PWD) of the Department of Administration, any state agency or commission entering into a public works contract, the Commission governing the Ports of Indiana, the Department of Transportation, and units of local government.

Reporting Requirements: The bill requires the Commissioner of the Department of Administration to prepare an annual report for the public and the Legislative Council stating, for the contractors awarded public works contracts by the state and the subcontractors with which these contractors entered into subcontracts, the percentage of the contractors' and subcontractors' employees working on the public works contracts who are residents of Indiana.

Indiana Preference: It requires certain public works projects to use Indiana-produced steel or foundry products and materials, equipment, and durable goods made in Indiana.

Effective Date: (Amended) Upon passage; July 1, 2009.

Explanation of State Expenditures: *Expiration:* According to the Indiana Department of Administration (IDOA), the purchasing preferences are awarded during the evaluation of bids and are a factor in determining who will be awarded contracts. The actual bid price does not change. If the provisions for price preferences expired, then state expenditures could decrease, but it is unknown to what extent.

(Revised) *Public Works Contracts:* The Code of Federal Regulations for highway projects prohibits procedures or requirements that operate to discriminate against the employment of labor from any other state in construction of a federal-aid project. The Federal Highway Administration (FHWA) has withheld federal funding from transportation projects upon learning that the contract included a local hiring preference, and the withholding has been upheld in the courts. From the INDOT budget, federal funds for highway operations are \$695.3 M for FY 2009 and are projected to be \$698.2 M for both FY 2010 and FY 2011. Also from the INDOT budget, federal aid to local units is \$180.0 M in FY 2009 and is projected to be \$266.0 M for both FY 2010 and FY 2011. Also, the American Recovery and Reinvestment Act will provide \$440 M for INDOT, \$198 M for local agency highway projects, and \$20 M for transportation enhancements.

Also, the bill would have indeterminate fiscal impact on the cost of state-funded public works projects. Costs for the IDOA, a state agency or commissions contracting for public works, the Ports of Indiana, and the INDOT could increase to the extent that a low-cost bidder who does not employ the required proportion of Indiana residents or who subcontracts with a subcontractor who does not employ the required proportion of Indiana residents may not be granted a contract. Also, contracts awarded to contractors that fail to maintain or whose subcontractor fails to maintain the required proportions of Indiana residents are terminated, reinitiating the contracting process.

(Revised) *Public Works Contracts-Reporting Requirements:* Before August 15 of each year, beginning in 2010, the PWD, state agencies or commissions entering into a public works contract, the Ports of the Indiana Commission, and the INDOT are to report to the Commissioner of the Department of Administration on the percentage of employees employed by contractors or subcontractors who work on each contract and who are residents of Indiana. The Commissioner is to compile and make available this information for the public and the Legislative Council before October 1 of each year.

(Revised) *Indiana Preference:* The bill could increase the cost of public works projects for public agencies by providing a differential of 15% or 25% of the bid or offered price of a material, equipment, or durable good of foreign origin. The bill allows the public agency head contracting for the construction, reconstruction, alteration, repair, improvement, or maintenance of a public works project to determine in writing that using material, equipment, or durable goods made in Indiana would benefit the state or local economy and increase the differential from 15% to 25%; or that there are not sufficient quantities of Indiana-made goods to meet the public works project requirements thereby not applying the Indiana requirements to the public works contract.

The bill also removes a preference for United States steel and foundry products and, instead, applies the preference to Indiana-made steel and foundry products.

Further, the bill requires the DOA to develop criteria to determine whether steel or foundry products are produced in Indiana and to develop criteria for determining whether materials, equipment, and durable goods are produced in Indiana. It requires the DOA to publish the criteria and maintain a list of businesses and

products that meet the criteria on its website.

The reporting requirements, criteria development, and list maintenance could minimally increase costs to the DOA and other contracting agencies. The funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Background and Additional Information-

Expiration: Current statute provides for the following price preferences for supplies purchased by state agencies from Indiana businesses:

- (1) 5% for purchases less than \$500,000;
- (2) 3% for purchases at least \$500,000 but less than \$1 M; and
- (3) 1% for purchases expected to be at least \$1 M.

Also, a state agency may award a contract to the lowest and responsive offeror, regardless of the above preferences, if they are an Indiana business or a business from a state that borders Indiana and does not provide a preference more favorable than Indiana.

(Revised) *Public Works Contracts- Resident of Indiana:* A resident of Indiana is defined as a person at least 18 years old and who has a registered motor vehicle in Indiana, is registered to vote in Indiana, has a child enrolled in an elementary or secondary school in Indiana, or who derives more than one-half of the person's gross income from sources in Indiana. However, if a person only meets the income factor, the person may not be a resident of Indiana if the preponderance of the evidence of the first three factors is not met.

Contractor and Subcontractor Qualifications: Currently, the PWD requires contracts and subcontractors to be certified prior to bidding or performing work under contract for which the cost is estimated at more than \$150,000. INDOT requires a form outlining the contractor's experience and financial condition for prequalification before bidding on contracts for the maintenance or construction of highways, bridges, and appurtenances.

Indiana Preference- Steel and Foundry Products: For CY 2008 the state had about \$59 M in public works projects; a rough estimate is that \$30 M of the projects involved steel or foundry products, and steel and foundry product costs were about 15% of the project costs. There is a 15% premium for the use of United States steel and foundry products, resulting in an estimated premium expense of \$675,000, or about 2.3% of the new construction costs. Steel made in the United States is stamped with the country of origin, but the state of origin of steel or foundry products is not as readily available, and the DOA does not track the state of origin currently.

Material, Equipment, or Durable Goods: Generally, public works project costs are 50% materials and 50% labor. (Equipment is purchased separately through the Procurement Division, which would increase the amount of materials used in the project.) Using the information above, about \$25 M was spent on materials in CY 2008. Assuming a 15% premium for the use of Indiana-made material, equipment, or durable goods, the maximum cost of the Indiana-made premium would have been about \$3.8 M.

Department of Administration: In FY 2008, the DOA reverted \$28,742 to the state General Fund. On January 19, 2009, the DOA had 25 vacant positions with a combined salary of \$634,244.

Explanation of State Revenues: (Revised) *Public Works Contracts - Liquidated Damages*: The bill allows for liquidated damages from contractors or subcontractors who do not meet the required number of resident employees of \$1,000 per each nonresident employee in excess of the number of nonresidents permitted. Any revenue resulting from liquidated damages will be deposited in the state General Fund.

Explanation of Local Expenditures: (Revised) *Public Works Contracts and Indiana Preference*: The proportions of Indiana residents employed by contractors and subcontractors would apply to local unit public works contracts. Also, the preference for using material, equipment, or durable goods made in Indiana applies to local units. This would have indeterminate fiscal impact on local public works projects.

Explanation of Local Revenues:

State Agencies Affected: IDOA; Any state agency or commission entering into a public works contract; Ports of Indiana; INDOT.

Local Agencies Affected: Cities, towns, and counties; Local units entering into public works contracts.

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